

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

**SPECIAL SECOND DIVISION**

MONACAT TRADING,  
Petitioner,

CTA CASE NO. **9851**

- versus -

Members:

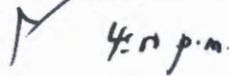
**BACORRO-VILLENA**, Acting Chairperson, and,  
**CUI-DAVID II**.

COMMISSIONER OF  
CUSTOMS, BUREAU OF  
CUSTOMS,

Respondents.

Promulgated:

**AUG 04 2022**

X-----X  
 *4:11 p.m.*

**DECISION**

**BACORRO-VILLENA, J.:**

At bar is a Petition for Review<sup>1</sup> filed by petitioner Monacat Trading (**petitioner/Monacat**) pursuant to Rule 8, Section 3(a)<sup>2</sup> of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal of respondent Commissioner of Customs' (**respondent's/ COC's**) Order dated 19 April 2018<sup>3</sup> (**assailed Order**), denying petitioner's Motion for Reconsideration<sup>4</sup> (**MR**) on respondent COC's Decision dated 04 October 2017<sup>5</sup> (**assailed Decision**), which reversed

<sup>1</sup> Filed on 04 June 2018, Division Docket, Volume I, pp. 19-42.

<sup>2</sup> **SEC. 3. Who may appeal; period to file petition.** – (a) A party adversely affected ... by a decision or ruling of the Commissioner of Customs ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling [.]

<sup>3</sup> Offered as Exhibit "P-1", Division Docket, Volume II, pp. 789-806.

<sup>4</sup> Filed on 06 November 2017, id., Volume I, pp. 137-146.

<sup>5</sup> Id., Volume I, pp. 44-69.

and set aside the Consolidated Decision dated 03 March 2017<sup>6</sup> of the Officer-In-Charge District Collector of Customs (OIC-District Collector).

**PARTIES OF THE CASE**

Petitioner is a duly registered single proprietorship and is an accredited importer with the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).<sup>7</sup> It may be served with copies of notices, pleadings, memoranda, resolutions and decisions through their counsel, The Law Firm of Bartolome Salazar & Partners, with office address at Unit 2003 Taipan Place Bldg., F. Ortigas Jr. Road, Ortigas Center, Pasig City.<sup>8</sup>

Respondent BOC is an agency under the Department of Finance (DOF) tasked primarily with the assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws, among others. It is headed by herein respondent COC, Isidro S. Lapeña (Customs Commissioner Lapeña). Respondents are being represented by their statutory counsel, the Office of the Solicitor General (OSG), with office address at OSG Building, 134 Amorsolo Street, Legaspi Village, Makati City.<sup>9</sup>

**FACTS OF THE CASE**

Sometime in July 2015, several shipments of vehicles (**subject vehicles**) consigned to petitioner arrived at the Port of Batangas (**POB**), with the following details<sup>10</sup>:

| Import Entry and Internal Revenue Declaration (IEIRD) No. | Bill of Lading (BL) No.  | Item Description | Tariff Heading | Value <i>per</i> Unit (US \$) |
|-----------------------------------------------------------|--------------------------|------------------|----------------|-------------------------------|
| C-6380 <sup>11</sup>                                      | MCC830419A <sup>12</sup> | One (1) Unit     | 8703.2324      | \$29,280.00                   |

<sup>6</sup> Exhibit “P-2”, Bureau of Customs (BOC) Records.  
<sup>7</sup> Paragraph (Par.) 1, Joint Stipulation of Facts (JSF), Division Docket, Volume I, p. 236.  
<sup>8</sup> Par. 7, Petition for Review, *id.*, p. 20.  
<sup>9</sup> Par. 2, JSF, *id.*, p. 236.  
<sup>10</sup> Par. 3, *id.*, p. 237.  
<sup>11</sup> Exhibit “P-15”, BOC Folder Batangas Seizure Identification (S.I.) No. 09-15, pp. 31-32.

| Import Entry and Internal Revenue Declaration (IEIRD) No. | Bill of Lading (BL) No.  | Item Description                                                             | Tariff Heading | Value per Unit (US \$) |
|-----------------------------------------------------------|--------------------------|------------------------------------------------------------------------------|----------------|------------------------|
|                                                           |                          | Brand New 2015 Land Rover                                                    |                |                        |
| C-6375 <sup>13</sup>                                      | MCC828737A <sup>14</sup> | Two (2) Units Brand New 2015 Land Rover Defender 90                          | 8703.2324      | \$21,684.00            |
| C-6372 <sup>15</sup>                                      | 567278555A <sup>16</sup> | One (1) Unit Brand New Ferrari California Coupe                              | 8703.2324      | \$122,153.00           |
| C-6373 <sup>17</sup>                                      | 567278562A <sup>18</sup> | Two (2) Units Brand New Mercedes Benz                                        | 8703.2324      | \$26,985.00            |
| C-6381 <sup>19</sup>                                      | MCC821022 <sup>20</sup>  | One (1) Unit Brand New 2015 Mercedes Benz C200 Silver, Sedan, 4 Cylinder Gas | 8703.2324      | \$29,512.00            |
| C-6403 <sup>21</sup>                                      | NS15F5485A <sup>22</sup> | One (1) Unit Brand New McLaren 540C                                          | 8703.2324      | \$60,000.00            |
| C-6374 <sup>23</sup>                                      | MCC816657A <sup>24</sup> | One (1) 2015 Unit Mercedes Benz C200                                         | 8703.2324      | \$29,512.00            |
| C-6398 <sup>25</sup>                                      | 953754829A <sup>26</sup> | One (1) Unit Brand New Toyota Prado SUV                                      | 8703.2324      | \$30,000.00            |
| C-6395 <sup>27</sup>                                      | 954024094A <sup>28</sup> | Two (2) Units Brand New 2015 Toyota Land Cruiser GX SUV                      | 8703.2324      | \$37,000.00            |

12 Exhibit "P-20", id., p. 36.

13 Exhibit "P-19", BOC Folder Batangas S.I. No. 08-15, pp. 33-34.

14 Exhibit "P-21", id., p. 38.

15 Exhibit "P-16", BOC Folder Batangas S.I. No. 05-15, pp. 27-28.

16 Exhibit "P-22", id., p. 32.

17 Exhibit "P-13", BOC Folder Batangas S.I. No. 06-15, pp. 24-25.

18 Exhibit "P-23", id., p. 29.

19 Exhibit "P-12", BOC Folder Batangas S.I. No. 10-15, pp. 27-28.

20 Exhibit "P-24", id., p. 34.

21 Exhibit "P-18", BOC Folder Batangas S.I. No. 14-15, pp. 23-24.

22 Exhibit "P-27", id., p. 28.

23 Exhibit "P-17", BOC Folder Batangas S.I. No. 07-15, pp. 26-27.

24 Exhibit "P-25" Division Docket, Volume III, p. 1035.

25 Exhibit "P-14", BOC Folder Batangas S.I. No. 12-15, pp. 28-29.

26 Exhibit "P-28", id., p. 33.

27 Exhibit "P-11", BOC Folder Batangas S.I. No. 11-15, pp. 25-26.

28 Exhibit "P-26", id., p. 29.

The subject vehicles, as declared in the Import Entry and Internal Revenue Declarations (IEIRDs), were processed by Customs Examiners Maricel A. Manguiat (**Manguiat**) and Noralyn T. Asaria (**Asaria**). After examining the documents submitted in support of the subject shipments, said customs officers processed the subject vehicles and noted in the IEIRDs<sup>29</sup> that these were under tentative liquidation as approved, and pending the submission of the issuance of the Import and Assessment Service (IAS) clearance, ESS Motor Vehicle Monitoring and Clearance Office (EMVMCO) clearance and Authority To Release Imported Goods (ATRIG) from the BIR.

On 24 July 2015, then POB's Acting District Collector of Customs, Ernesto P. Benitez, Jr. (**POB Acting District Collector Benitez**) indorsed the subject vehicles and their supporting documents to IAS for value information.<sup>30</sup>

On even date, then BOC Deputy Commissioner of the Enforcement Group (EG), Ariel Nepomuceno (**EG Deputy Commissioner Nepomuceno**), issued Alert Orders (AOs)<sup>31</sup> against the subject motor vehicles for alleged violation of Section 2503<sup>32</sup>, in relation to Section 2530<sup>33</sup>, of Presidential Decree (PD) No. 1464<sup>34</sup>, otherwise known as the Tariff Customs and Code of the Philippines (TCCP), as amended.<sup>35</sup> At the time of the subject vehicles' importation and the commission of the supposed violations, the TCCP was the prevailing law.

On 05 August 2015, the assigned Officers-on-Case, Alexander Ugay (**Ugay**) and Doy De Castro (**De Castro**), together with Customs Examiners Manguiat and Asaria, went to the POB for the conduct of the spot check or 100% physical examination of the subject vehicles.<sup>36</sup>

<sup>29</sup> See Exhibits "P-15-D", supra at note 11, p. 32; "P-19-D", supra at note 13, p. 34; "P-16-D", supra at note 15, p. 28; "P-13-D", supra at note 17, p. 25; "P-12-D", supra at note 19, p. 28; "P-18-D", supra at note 21, p. 24; "P-17-D", supra at note 23, p. 27; "P-14-D", supra at note 25, p. 29; and "P-11-D", supra at note 27, p. 26.

<sup>30</sup> Par. 4, Decision dated 04 October 2017, supra at note 5.

<sup>31</sup> See Exhibits "R-1", "R-2", "R-3", "R-4", "R-6", "R-7", "R-8", "R-9", "R-10", Division Docket Volume III, pp. 1049-1090.

<sup>32</sup> SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.*

<sup>33</sup> SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.*

<sup>34</sup> A DECREE TO CONSOLIDATE AND CODIFY ALL THE TARIFF AND CUSTOMS LAW OF THE PHILIPPINES.

<sup>35</sup> Par. 4, JSF, Division Docket, Volume I, p. 238.

<sup>36</sup> Par. 6, Decision dated 04 October 2017, supra at note 5.

On 10 August 2015, Ugay and De Castro submitted a Memorandum<sup>37</sup> of even date to EG Deputy Commissioner Nepomuceno, recommending the issuance of Warrants of Seizure and Detention (WSDs) against the subject vehicles by reason of misdeclaration and gross undervaluation, citing Section 2503, in relation to Section 2530, of the TCCP, as amended.<sup>38</sup>

On 11 August 2015, EG Deputy Commissioner Nepomuceno indorsed the aforementioned Memorandum to POB Acting District Collector Benitez, for his information and consideration.<sup>39</sup>

On 26 August 2015, POB Acting District Collector Benitez issued WSDs against the subject imported motor vehicles for alleged violation of Section 2503, in relation to Section 2530, of the TCCP, as amended, viz:<sup>40</sup>

| IEIRD Nos. | Item Description                                                        | Seizure Identification (S.I.) No. |
|------------|-------------------------------------------------------------------------|-----------------------------------|
| C-6380     | One (1) Unit Brand New 2015 Land Rover Range Rover                      | 09-15                             |
| C-6375     | Two (2) Units Brand New Land Rover Defender 90                          | 08-15                             |
| C-6372     | One (1) Unit Brand New 2015 Ferrari California Coupe                    | 05-15                             |
| C-6373     | Two (2) Units Brand New 2015 Mercedes Benz GLK350                       | 06-15                             |
| C-6381     | One (1) Unit Brand New 2015 Mercedes Benz C200, Sedan, Silver, 6yl, Gas | 10-15                             |
| C-6403     | One (1) Unit Brand New Maclaren 540C                                    | 14-15                             |
| C-6374     | One (1) Unit Mercedes Benz C200                                         | 07-15                             |
| C-6398     | One (1) Unit Brand New Toyota Prado SUV                                 | 12-15                             |
| C-6395     | Two (2) Units Brand New 2015 Toyota Land Cruiser GX                     | 11-15                             |

On 08 September 2015, then BOC-IAS Deputy Commissioner of the Assessment and Operations Coordinating Group (AOCG), Agaton Teodoro O. Uvero (AOCG Deputy Commissioner Uvero) issued the IAS 2<sup>nd</sup> Indorsement (IAS Values)<sup>41</sup>, indicating the values of the

<sup>37</sup> Exhibit "R-21", Division Docket, Volume III, pp. 1112-1116.  
<sup>38</sup> Par. 5, JSF, id., Volume I, p. 238.  
<sup>39</sup> Par. 6, id.  
<sup>40</sup> Par. 7, id.  
<sup>41</sup> Exhibit "R-22", offered as "Values from the Import Assessment Coordinating Group (IASCG), Division Docket, Volume III., p. 1117. In the Resolution dated 26 May 2021 (id., Volume III,

subject luxury vehicles consigned to petitioner and referred to the IAS for the proper valuation based on the model and/or series as found during the spot check or 100% physical examination.

On 03 March 2017, POB OIC-District Collector Reynaldo M. Galeno (**POB OIC-District Collector Galeno**) rendered a Consolidated Decision, ordering the quashal of the WSDs issued against the subject shipments covered by IEIRD Nos. C-6372, C-6375, C-6380, C-6373, C-6381, C-6403<sup>42</sup>, C-6374, C-6398 and C-6395. He likewise ordered the continuous processing of the import entries upon payment of additional duties and taxes. He further ordered that the surcharge be doubled for IEIRD Nos. C-6398-15, C-6372-15, C-6380-15, C-6375-15, and a one-time surcharge for IEIRD No. C-6395-15.<sup>43</sup>

On 04 October 2017, respondent COC rendered the assailed Decision, reversing and setting aside POB OIC-District Collector Galeno's Consolidated Decision. In the assailed Decision, he ordered the forfeiture of the subject vehicles in favor of the government, to be disposed of in accordance with customs laws, rules and regulations.

On 06 November 2017, petitioner filed before the Office of respondent COC an MR<sup>44</sup> to the assailed Decision. On 19 April 2018,

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pp.1128-1131), the Court noted that Exhibit "R-22" was identified in the Judicial Affidavit of Alexander DG. Ugay as "IAS Values" or "IAS 2<sup>nd</sup> indorsement dated 08 September 2015".

<sup>42</sup> Cited as is from the Consolidated Decision dated 03 March 2017. However, a perusal of the facts of the said Consolidated Decision reveals that there is no Import Entry and Internal Revenue Declaration (IEIRD) No. C-404. There is only IEIRD No. C-403. **IEIRD No. C-404 appears to be a mere typographical error and shall thus be referred to herein as IEIRD No. C-403.**

<sup>43</sup> For clarification, the Entry Nos. in the Consolidated Decision correspond to the following IEIRD Nos.:

| Entry Nos.<br><i>Per Consolidated Decision</i> | IEIRD Nos. |
|------------------------------------------------|------------|
| C-6372-15                                      | C-6372     |
| C-6373-15                                      | C-6373     |
| C-6374-15                                      | C-6374     |
| C-6375-15                                      | C-6375     |
| C-6380-15                                      | C-6380     |
| C-6381-15                                      | C-6381     |
| C-6395-15                                      | C-6395     |
| C-6398-15                                      | C-6398     |
| C-6403-15                                      | C-6403     |

<sup>44</sup> For uniformity, the IEIRD Nos. shall be used in the discussion.  
Supra at note 4.

respondent COC issued the assailed Order<sup>45</sup>, denying petitioner's MR and affirming his assailed Decision. Petitioner allegedly received a copy of the assailed Order on 03 May 2018.<sup>46</sup>

### **PROCEEDINGS BEFORE THE SECOND DIVISION**

Aggrieved by the aforesaid assailed Decision and Order, petitioner filed on 04 June 2018 the instant Petition for Review<sup>47</sup> before the Court of Tax Appeals (CTA). The same was raffled to the Second Division and docketed as CTA Case No. 9851.

On 28 June 2018, respondents received the summons dated 19 June 2018<sup>48</sup>, requiring them to file an answer within fifteen (15) days from the receipt thereof, or until 13 July 2018. After being granted an extension of time, respondents filed their Answer<sup>49</sup> on 28 September 2018.<sup>50</sup>

Later, or on 31 January 2019, the pre-trial conference proceeded. The parties filed their Joint Stipulations of Facts<sup>51</sup> (JSF) on 04 March 2019. Still later, the Court issued the Pre-trial Order dated 05 April 2019<sup>52</sup> adopting the parties' JSF and setting the trial dates.

During the trial that thereafter ensued, petitioner presented the following witnesses, namely: (1) Mermelinda Dela Cruz (**Dela Cruz**); (2) POB OIC-District Collector Galeno; (3) Customs Examiner Manguiat; and, (4) Customs Examiner Asaria.

Through her Judicial Affidavit<sup>53</sup>, Dela Cruz testified that: (1) , petitioner filed the IEIRDs and correctly described each and every

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<sup>45</sup> Supra at note 3.

<sup>46</sup> Par. 6, Timeliness of the Petition, Petitioner's Memorandum dated 20 July 2021, Division Docket, Volume III, p. 1185.

<sup>47</sup> Supra at note 1.

<sup>48</sup> Division Docket, Volume I, p. 148.

<sup>49</sup> Id., pp. 159-167.

<sup>50</sup> Respondents requested for an extension of 30 days from 13 July 2018 to file an answer, or until 12 August 2018, which the Court granted. However, respondents filed a Motion to Admit with attached Answer only on 28 September 2018 by registered mail. The Court, through a Resolution dated 23 November 2018, granted the said motion and admitted respondents' Answer.

<sup>51</sup> Dated 15 February 2019, id., pp. 236-246.

<sup>52</sup> Id., pp. 251-259.

<sup>53</sup> Exhibit "P-95", id., Volume II, pp. 415-440.

motor vehicle in their respective IEIRDs as appearing on their corresponding packing list and commercial invoices; (2) petitioner paid the government duties and taxes for each vehicle as assessed by the Customs Examiner; and, (3) the BIR issued the ATRIG<sup>54</sup> for each vehicle after petitioner paid the assessed duties.

On cross examination, Dela Cruz stated that: (1) she was duly authorized by petitioner's Licensed Customs Broker, Flaviano Dela Cruz (LCB Dela Cruz), to process the application and release of freight; and, (2) she was present during the spot check or 100% physical examination of the subject vehicles.<sup>55</sup>

On re-direct and re-cross examinations, Dela Cruz stated that the values appearing on the IAS Values<sup>56</sup> were sourced from the internet.<sup>57</sup>

POB OIC-District Collector Galeno also testified through his Judicial Affidavit<sup>58</sup> and declared that: (1) he was the Collector of Customs who issued the Consolidated Decision dated 03 March 2017; (2) the subject motor vehicles were found not subject to forfeiture as there was no misdeclaration and undervaluation; and, (3) the methods of valuation of the dutiable values of the imported vehicles should be applied sequentially pursuant to the TCCP, as amended.

On cross examination, then POB OIC-District Collector Galeno admitted that he was not present when the subject vehicles were physically examined for assessment. However, when the AOs were issued, he personally and actually witnessed the opening of the containers that carried the subject vehicles. In addition, he insisted to have rendered the Consolidated Decision only after both parties were heard and their documents duly considered.<sup>59</sup> 

<sup>54</sup> Exhibits "P-66", "P-68", "P-70", "P-72", "P-74", "P-76", "P-78", "P-80" and "P-82", id., pp. 669, 667, 664, 663, 668, 670, 666, 665, 662 respectively.

<sup>55</sup> TSN dated 23 September 2019.

<sup>56</sup> Exhibit "R-22", supra at note 41.

<sup>57</sup> TSN dated 23 September 2019.

<sup>58</sup> Exhibit "P-104", Division Docket, Volume II, pp. 570-598.

<sup>59</sup> TSN dated 19 December 2019.

On re-direct examination, POB OIC-District Collector Galeno expounded on the supposed meaning of “misdeclaration” based on Customs Administrative Order (CAO) No. 006-93<sup>60</sup>. No re-cross examination was conducted.<sup>61</sup>

For her part, Customs Examiner Manguiat testified through her Judicial Affidavit<sup>62</sup> that: (1) she was the Customs Examiner who processed five (5) of the nine (9) subject motor vehicles covered by IEIRD Nos. C-6372, C-6375, C-6380, C-6395 and C-6403; (2) she examined the IEIRDs and compared them with the documents submitted by the importer/petitioner; and, (3) after examination of the documents, she noted in the IEIRDs that the subject vehicles were being processed, subject to tentative liquidation as approved (pending the issuance of the IAS clearance and the ATRIG).

During the cross examination, Manguiat stated that the IEIRDs contained only a general description of the subject vehicles as opposed to the specific description in the commercial invoices. However, since the chassis numbers in the commercial invoices and the IEIRDs are the same, she clarified that there was no misdeclaration. In addition, she explained that respondent BOC has a Memorandum mandating that imported vehicles shall be referred to the IAS for value verification.<sup>63</sup>

On re-direct examination, Manguiat reiterated that the declared chassis numbers in the IEIRDs are the same in all the subject vehicles when they were physically inspected. On re-cross examination, Manguiat confirmed that the chassis numbers only refer to the identity of the subject vehicles but not to the weight, measurement, price, brand and the model.<sup>64</sup>

Customs Examiner Asaria, who also testified through her Judicial Affidavit<sup>65</sup>, declared that: (1) she was the Customs Examiner who processed four (4) of the nine (9) subject vehicles covered by IEIRD Nos. C-6373, C-6374, C-6381, and C-6398; (2) she examined the IEIRDs

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<sup>60</sup> Automatic Forfeiture.

<sup>61</sup> TSN dated 19 December 2019.

<sup>62</sup> Exhibit “P-105”, Division Docket, Volume II, pp. 716-741.

<sup>63</sup> TSN dated 28 October 2020.

<sup>64</sup> Id.

<sup>65</sup> Exhibit “P-106”, Division Docket, Volume III, pp. 759-774.

and compared it with the documents submitted by the importer/petitioner; and, (3) after examination of the documents, she noted in the IEIRDs that the subject vehicles were being processed, subject to tentative liquidation as approved (pending the issuance of the IAS clearance and the ATRIG).

On cross examination, Customs Examiner Asaria explained that the IAS valuation may be used if the declarations in the invoice documents are unreliable. However, as the IAS clearance was issued only after the AOs on the subject vehicles were issued, she did not anymore use it as basis for the valuation. She added that the front page of the IEIRDs contained only a general description of the vehicles as opposed to the specific description in the commercial invoices.<sup>66</sup>

On re-direct examination, Customs Examiner Asaria confirmed that the make, brand, color, and chassis numbers appearing in the IEIRDs and in the invoices are the same. On re-cross examination, she confirmed that she was not able to adjust the valuation of the vehicles as they were already seized at the time.<sup>67</sup>

After the presentation of the last witness, petitioner filed its Formal Offer of Exhibits<sup>68</sup> (FOE) on 23 November 2020. Respondents filed their Comment/Opposition<sup>69</sup> thereto on 03 December 2020.

In the Resolution dated 20 January 2021<sup>70</sup>, the Court admitted petitioner's exhibits, except for Exhibits "P-1" and "P-25"<sup>71</sup> for petitioner's failure to identify and to submit the marked documents, respectively.

<sup>66</sup> TSN dated 19 December 2019.

<sup>67</sup> Id.

<sup>68</sup> Division Docket, Volume III, pp. 814-834.

<sup>69</sup> Id., pp. 850-881.

<sup>70</sup> Id., pp. 885-887.

<sup>71</sup>

| Exhibit No. | Description                                          |
|-------------|------------------------------------------------------|
| "P-1"       | Order issued by Isidro S. Lapeña dated 19 April 2018 |
| "P-25"      | Bill of Lading No. MCC816657                         |

Later, upon motion and after petitioner was able to present in open court the certified true copy of Exhibit "P-25"<sup>72</sup>, the Court ultimately admitted the same as part of petitioner's documentary evidence.<sup>73</sup>

Respondents, on the other hand, presented the assigned Officers-on-Case, De Castro and Ugay, who testified on direct examination by way of their respective Judicial Affidavits, and whose testimonies were completed after the respective cross, re-direct and re-cross examinations.

On the witness stand, De Castro identified his Judicial Affidavit dated 25 January 2021<sup>74</sup>, where he declared that: (1) he was one of the assigned Officers-on-Case who investigated the subject vehicles; (2) upon examination and investigation, he discovered several violations of customs, laws, rules and regulations; (3) upon issuance of the AOs, he conducted a spot check or 100% physical examination of the subject vehicles; (4) he noted that the subject vehicles were misdeclared and grossly undervalued; and, (5) he personally served the WSDs at petitioner's address but then discovered that there was no office or warehouse at the said location.

On cross examination, De Castro admitted that petitioner processed the IEIRDs even if the IAS clearance and the ATRIG were not yet issued. In addition, respondent BOC did not use the IAS Values<sup>75</sup> during the investigation since such a report resulting from the value verification was issued much later.<sup>76</sup>

On re-direct examination, De Castro confirmed that the subject red-tagged vehicles were not physically examined during the assessment as the shipping seals were still intact when they conducted their investigation. Also, the subject vehicles were deliberately misdeclared, particularly as regards their respective models or series, so they will be assessed with lower taxes or charges. On re-cross

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<sup>72</sup> Id., p. 1035.

<sup>73</sup> See Order dated 01 February 2021, Division Docket, Volume III, p. 948.

<sup>74</sup> Id., pp. 902-924.

<sup>75</sup> Exhibit "R-22", supra at note 41.

<sup>76</sup> TSN dated 01 February 2021.

examination, De Castro stated that the import documents came from various sellers based abroad.<sup>77</sup>

Ugay likewise identified his Judicial Affidavit dated 25 January 2021<sup>78</sup> wherein she corroborated De Castro's declarations above. On cross examination, Ugay also stated that the declared values that respondent BOC's EG used as the basis in issuing its Memorandum<sup>79</sup> was supplied by the person tasked to perform the assessment. According to him, he is unaware of the EG's actual basis for the assessed amounts.<sup>80</sup>

On re-direct examination, Ugay testified that it is the customs broker who filled up, facilitated, and processed the IEIRDs. On re-cross examination, he confirmed that the subject vehicles were not released from respondent BOC's premises and that petitioner filed an application for ATRIG.<sup>81</sup>

After the presentation of the last witness, on 01 March 2021, respondents filed their FOE<sup>82</sup> consisting of Exhibits "R-1" to "R-26", inclusive of sub-markings. Petitioner filed its Comment/Opposition<sup>83</sup> thereto on 16 March 2021.

In the Resolution dated 26 May 2021<sup>84</sup>, the Court admitted all of respondents' documentary exhibits. In the same Resolution, the Court directed the parties to submit their respective memoranda within thirty (30) days from the receipt thereof.

On 01 July 2021, respondents filed their Memorandum<sup>85</sup>, while petitioner filed its Memorandum<sup>86</sup> on 27 July 2021. Subsequently, the Court submitted the instant case for decision.<sup>87</sup>

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Id.

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Division Docket, Volume III, pp. 960-981.

79

Supra at note 37.

80

TSN dated 01 March 2021.

81

Id.

82

Division Docket, Volume III, pp. 1041-1048.

83

Id., pp. 1124-1126.

84

Id., pp. 1128-1131.

85

Id., pp. 1132-1181.

86

Id., pp. 1184-1222.

87

See Resolution dated 04 August 2021, id., p. 1223.

## ISSUE

The several issues put forth by the parties in their JSF may be summarily stated as follows —

WHETHER THE SUBJECT VEHICLES WERE VALIDLY SEIZED AND/OR FORFEITED PURSUANT TO SECTION 2503, IN RELATION TO SECTION 2530(1)(3)(4)(5), OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCCP), AS AMENDED.

## ARGUMENTS

In support of the above issue, petitioner argued that there was no probable cause for the issuance of the seizure and forfeiture order. There was also no undervaluation because it used the declared transaction values from the commercial invoices as the basis for the dutiable values of the subject vehicles. Neither was there any misdeclaration as the IEIRDs correctly declared the subject vehicles, in which case, it could not likewise be charged with fraud in its importation.

In addition, petitioner claimed that respondent COC's inaction within 48 hours from the issuance of POB OIC-District Collector Galeno's Consolidated Decision dated 03 March 2017 already rendered the shipments as "deemed released", pursuant to Section 1117<sup>88</sup> of Republic Act (RA) No. 10863<sup>89</sup> or the Customs Modernization and Tariff Act (CMTA).

Respondents countered that this Court lacks jurisdiction over the instant case. As for the other issues, respondents insisted that

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<sup>88</sup> SEC. 1117. *Warrant of Seizure or Order of Release.* — The District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release. In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.

The lifting of the alert order shall be issued by the District Collector only upon the affirmation of the decision of the District Collector by the Commissioner, or after the lapse of the period of review by the Commissioner, whichever is earlier.

<sup>89</sup> AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION.

there was misdeclaration as the spot check or 100% physical examination of the subject vehicles yielded different results compared to what were declared in the IEIRDs. Moreover, the subject vehicles were clearly undervalued considering that the declared values *per* IEIRDs were much lower than the “as found” values *per* IAS Values.

### RULING OF THE COURT

Besides the issues concerning the invalidity of the seizure and/or forfeiture of the subject vehicles, the Court deems it more propitious to first resolve respondents’ attack against this Court’s jurisdiction over the case.

THE COURT HAS NO JURISDICTION  
OVER THE INSTANT CASE.

Section 7(a)(4) of RA 1125<sup>90</sup>, as amended by RA 9282<sup>91</sup> and RA 9503<sup>92</sup>, provides in part:

...

Sec. 7. Jurisdiction – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

...

(4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, **seizure, detention** or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]<sup>93</sup>

...

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<sup>90</sup> AN ACT CREATING THE COURT OF TAX APPEALS.

<sup>91</sup> AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

<sup>92</sup> AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

<sup>93</sup> Emphasis supplied.

In addition, Section 11 of the same law, mandates that the period to file an appeal to this Court is 30 days from receipt of the assailed decision or ruling. The relevant part states:

...

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may **file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

**Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.<sup>94</sup>

...

Thus, a party adversely affected by a decision or ruling of the COC may file an appeal with the CTA **within 30 days after the receipt of such decision or ruling.** This statutory privilege is echoed in Section 3(a), Rule 8 of the RRCTA, which reads:

...

SEC. 3. *Who may appeal; period to file petition.* —

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a **decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of

its original jurisdiction **may appeal to the Court by petition for review filed within thirty [30] days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.<sup>95</sup>

...

Petitioner alleged in its Petition for Review<sup>96</sup> and Memorandum<sup>97</sup> that it received respondent COC's assailed Order on 03 May 2018. Applying the foregoing provision, it thus had 30 days from receipt thereof to file the present Petition for Review, or until 02 June 2018. Since 02 June 2018 fell on a Saturday, it had until the next working day, or until 04 June 2018, to do so (pursuant to Administrative Matter [A.M.] No. 00-2-14-SC<sup>98</sup>). On this note, petitioner claims to have timely filed its appeal by registered mail on 04 June 2018.

In support of its claim on the timeliness of the appeal, petitioner offered as evidence respondent COC's assailed Order as its Exhibit "P-1"<sup>99</sup>. The purpose of such offer is to establish that respondent COC denied petitioner's MR<sup>100</sup> on the assailed Decision<sup>101</sup> (which reversed POB OIC-District Collector Galeno's Consolidated Decision dated 03 March 2017<sup>102</sup>).

However, the Court denied the admission of Exhibit "P-1"<sup>103</sup> as it was not duly identified by a competent witness.<sup>104</sup> Although petitioner received the Court's Resolution denying the admission of Exhibits "P-1" and "P-25"<sup>105</sup>, it was only able to submit the duly marked Exhibit "P-25"

<sup>95</sup> Emphasis supplied.

<sup>96</sup> Supra at note 1.

<sup>97</sup> Supra at note 86.

<sup>98</sup> Computation of Time When Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension Filed on Next Working Day is Granted, 29 February 2000.

<sup>99</sup> Supra at note 3.

<sup>100</sup> Supra at note 4.

<sup>101</sup> Supra at note 5.

<sup>102</sup> Supra at note 6.

<sup>103</sup> Supra at note 3.

<sup>104</sup> See Resolution dated 20 January 2021, supra at note 70.

<sup>105</sup> Supra at note 71.

and failed to offer any justifiable reason for the non-identification of Exhibit “P-1”; thus, only Exhibit “P-25” was admitted subsequently.<sup>106</sup>

In one case<sup>107</sup>, the Supreme Court ruled the contested evidence therein to be bereft of probative value and a mere scrap of paper (despite being offered in evidence) because it was not identified by any of the witnesses. The relevant portion states:

...  
... The trial court and the Court of Appeals were not convinced that she is a member of a non-Christian tribe or of a cultural minority group who may not transfer or dispose of real property without the approval of competent authority. The certification (marked as Exhibit “1”, p. 71, Records) that “Salome Rosendo Rivas is a member of the national cultural minorities...” which was offered in evidence has no probative value. It was not identified by the person who issued it, or his representative, nor by Salome Rivas. It is a mere scrap of paper. ...  
...

With the denial of admission of Exhibit “P-1”<sup>108</sup>, petitioner is thus left with no evidence to prove that it indeed received respondent COC’s assailed Order on the date claimed, i.e., 03 May 2018. As a result, the Court is prevented from properly determining the timeliness of the filing of the instant petition.

Incidentally, a further scrutiny of Exhibit “P-1”<sup>109</sup> would reveal that it does not indicate petitioner’s actual receipt of respondent COC’s assailed Order. Instead, it shows various receiving stamps from the different offices of respondent BOC and the Department of Finance (DOF), detailed below:

| Office                                  | Date          | Time      |
|-----------------------------------------|---------------|-----------|
| Internal Admin Group                    | 17 April 2018 | 04:35     |
| BOC Office of the Commissioner          | 18 April 2018 | 10:12     |
| BOC Revenue Collection Monitoring Group | 20 April 2018 | 1:26      |
| Office of the Director Legal Service    | 20 April 2018 | 3:33 p.m. |

<sup>106</sup> Supra at note 73.  
<sup>107</sup> *Salome Rosendo Rivas v. Hon. Court of Appeals, et al.*, G.R. No. 94630, 14 June 1993; Emphasis supplied.  
<sup>108</sup> Supra at note 3.  
<sup>109</sup> Supra at note 3.

| Office                            | Date          | Time       |
|-----------------------------------|---------------|------------|
| DOF POB                           | 03 May 2018   | 12:00 p.m. |
| POB OIC-District Collector Galeno | 04 [May] 2018 | -          |

Thus, as it stands, the copy of the assailed Order (Exhibit “P-1”)<sup>110</sup> is devoid of any proof of petitioner’s or its counsel’s (The Law Firm of Bartolome Salazar & Partners, formerly Bartolome Salazar Palomar & Associates’) actual receipt.

It is settled that the timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.<sup>111</sup> The basic evidentiary rule is that the party who asserts a fact or the affirmative of an issue has the burden of proving it.<sup>112</sup>

Additionally, the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.<sup>113</sup>

As petitioner failed to clearly establish the timely filing of its Petition for Review, it must perforce fail.

In *Glynna Foronda-Crystal v. Aniana Lawas Son*<sup>114</sup>, the Supreme Court aptly stated - “in law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.”

Nevertheless, *assuming* the Court has jurisdiction, the instant petition will still fail on the grounds essayed below.



<sup>110</sup> Id.  
<sup>111</sup> *Republic of the Philippines, et al. v. Martinez, et al.*, G.R. Nos. 224438-40, 03 September 2020.  
<sup>112</sup> Id.  
<sup>113</sup> *Gonzalo Puyat & Sons, Inc. v. Ruben Alcaide (Deceased), substituted by Gloria Alcaide*, G.R. No. 167952, 01 February 2012.  
<sup>114</sup> G.R. No. 221815, 29 November 2017.

I. PROBABLE CAUSE EXISTS FOR  
THE SEIZURE AND/OR  
FORFEITURE OF THE LUXURY  
VEHICLES.

Petitioner alleged that there was no probable cause for the seizure and/or forfeiture of the subject vehicles because Section 2530 of the TCCP, as amended, presupposes the commission of actual fraud.<sup>115</sup> According to petitioner, respondents failed to show any credible evidence that it committed fraud.

This Court is unable to agree.

Section 2535 of the TCCP, as amended, provides:

...

SEC. 2535. *Burden of Proof in Seizure and/or Forfeiture.* — In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code.

...

Based on the afore-quoted provision, before seizure and/or forfeiture proceedings are instituted, the law requires the presence of probable cause.<sup>116</sup> The term “probable cause”, which has been held synonymous with “reasonable cause”, means less than the evidence which will justify condemnation. It imports a seizure made under the circumstances which warrant suspicion.<sup>117</sup>

A review of the records discloses that probable cause existed to justify the seizure and/or forfeiture of the subject vehicles because petitioner deliberately failed to disclose the correct model and/or series of the subject vehicles in the IEIRDs and even after being

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<sup>115</sup> Supra at note 33.

<sup>116</sup> *Commissioner of Customs v. Singson, et al.*, G.R. No. 181007, 21 November 2016.

<sup>117</sup> *Batidor, et al. v. Bureau of Customs, et al.*, C.T.A. Case No. 6006, 24 August 2001.

notified of the BOC officials' findings, petitioner still failed to satisfactorily explain the discrepancies. It also appears that there was undervaluation of the subject vehicles.

In the assailed Decision and Order, respondent COC held that the subject vehicles are liable for forfeiture because petitioner committed misdeclaration and undervaluation, as defined in Section 2503 of the TCCP, as amended, which reads:

...

SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* — When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported article/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to penal provision under Section 3602 of this Code.

Relative thereto, Section 2530(1)(3)(4)(5) of the TCCP, as amended, provides:

...

SEC. 2530. *Property Subject to Forfeiture under Tariff and Customs Laws.* — Any vehicle, vessel or aircraft, cargo, article and other

objects shall, under the following conditions be subjected to forfeiture:

...

1. Any article sought to be imported or exported

...

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

(5) Through any other practice or device contrary to law by means of which such articles were entered through a customhouse to the prejudice of the government.

...

The requisites for the forfeiture of goods under Section 2530(1)(3)(4)(5) of the TCCP, as amended, are: (a) **the wrongful making** by the owner, importer, exporter or consignee of any **declaration** or affidavit, or the wrongful making or delivery by the same person of any invoice, letter or paper – all touching on the importation or exportation of merchandise; (b) **the falsity of such declaration**, affidavit, invoice, letter or paper; and (c) **an intention on the part of the importer/consignee to evade the payment of the duties due.**<sup>118</sup>

We shall now determine whether petitioner committed misdeclaration and undervaluation that warrants the forfeiture of the subject vehicles.

A. SEVEN (7) OF THE NINE (9)  
SHIPMENTS OF THE  
SUBJECT VEHICLES WERE  
MISDECLARED.

<sup>118</sup>

*Republic of the Philippines v. The Court of Tax Appeals, et al.*, G.R. No. 139050, 02 October 2001. Emphasis supplied.

CAO No. 8-2007<sup>119</sup>, as implemented by Customs Memorandum Order (CMO) No. 28-2007<sup>120</sup>, states the requirement for filing of the IEIRD with specific description of the motor vehicle/s in accordance with following illustrative example:

|                            |       |                      |
|----------------------------|-------|----------------------|
| ...                        |       |                      |
| 2.1.1. Make                | ----- | Nissan GX-4          |
| 2.1.2. Series              | ----- | Infinity             |
| 2.1.3. Body Type           | ----- | Wagon                |
| 2.1.4. Year Model          | ----- | 2006                 |
| 2.1.5. Gross Weight        | ----- | 3,600 kilos          |
| 2.1.6. Net Weight          | ----- | 1,800 kilos          |
| 2.1.7. Piston Displacement | ----- | 3,500 cc             |
| 2.1.8. No. of Cylinders    | ----- | 6 cylinders          |
| 2.1.9. Engine No.          | ----- | VK 45(DF) 4494       |
| 2.1.10. Chassis No.        | ----- | JNRBS08W25X402113    |
| 2.1.11. Vin No.            | ----- | xxxxxxxxxxxxxxxxxxxx |
| 2.1.12. Fuel               | ----- | Gas                  |
| ...                        |       |                      |

Compliance with CAO No. 8-2007 is mandated under Part IV(2.1) of the DOF Joint Order No. 1-2010<sup>121</sup>, which states:

...  
IV. ADMINISTRATIVE PROVISIONS:  
...

2. For purposes of arriving at the total landed value, the following procedures shall be adopted:

2.1 **The proper description of the automobile pursuant to CAO 8-2007 shall be mandatory.**

...

In the instant case, petitioner's declaration of the subject vehicles in the IEIRD are as follows: 

<sup>119</sup> DESCRIPTION OF IMPORTED ARTICLES IN TARIFF TERMS.

<sup>120</sup> Implementing CAO No. 8-2007 entitled DESCRIPTION OF IMPORTED ARTICLES IN TARIFF TERMS.

<sup>121</sup> Issued on 05 April 2010; Emphasis and underscoring supplied.

| IEIRD Description   | C-6372 <sup>122</sup> | C-6373 <sup>123</sup>                  | C-6374 <sup>124</sup> | C-6375 <sup>125</sup>                  | C-6380 <sup>126</sup> | C-6381 <sup>127</sup> | C-6395 <sup>128</sup>                  | C-6398 <sup>129</sup> | C-6403 <sup>130</sup> |
|---------------------|-----------------------|----------------------------------------|-----------------------|----------------------------------------|-----------------------|-----------------------|----------------------------------------|-----------------------|-----------------------|
| Make                | Ferrari               | 2 units of Mercedes Benz               | Mercedes Benz         | 2 units of Land rover                  | Land Rover            | Mercedes Benz         | 2 units of Toyota                      | Toyota                | McLaren               |
| Series              | California            | GLK 350                                | C200                  | Defender 90                            | LR2                   | C200                  | Land Cruiser                           | Prado                 | 540C                  |
| Body type           | Coupe                 | SUV                                    | Sedan                 | SUV                                    | SUV                   | Sedan                 | -                                      | SUV                   | -                     |
| Year Model          | 2015                  | 2015                                   | 2015                  | 2015                                   | 2015                  | 2015                  | -                                      | 2015                  | 2015                  |
| Gross Weight        | 1,395 kg              | 6,414 kg                               | 1,740 kg              | 6,100 kg                               | 3,150 kg              | 1,660 kg              | 5,000 kg                               | 2,140 kg              | 1,450 kg              |
| Net Weight          | 1,395 kg              | 6,414 kg                               | 1,740 kg              | 6,100 kg                               | 3,150 kg              | 1,660kg               | 5,000 kg                               | 2,140 kg              | 1,450 kg              |
| Piston Displacement | 8 cyl                 | 6 cyl                                  | 4 cyl                 | -                                      | 6 cyl                 | 4 cyl                 | -                                      | 6 cyl                 | -                     |
| No. of Cylinders    | -                     | -                                      | -                     | -                                      | -                     | -                     | -                                      | -                     | -                     |
| Engine No.          | -                     | -                                      | -                     | -                                      | -                     | -                     | -                                      | -                     | -                     |
| Chassis No./VIN No. | ZFF77XJB0Fo205504     | WDC4G5272FX212695<br>WDC4G5272FX224588 | WDD204377FF977896     | SALLDVAT8FA765512<br>SALLDVMP8FA445010 | SALFR2EF5FA231224     | WDD209342FF137940     | JTMHV09J8F4158782<br>JTMHV09J2F4161385 | JTEBH3FJ705083427     | SBM11DAEFW003703      |
| Fuel                | Gas                   | Gas                                    | Gas                   | -                                      | Gas                   | Gas                   | -                                      | Gas                   | Gas                   |

As can be gleaned above, petitioner failed to completely fill up or supply all the required details of the subject vehicles, particularly the “No. of Cylinders” and the “Engine No.”, among others, in violation of the aforesaid customs regulations.

Moreover, the Court cannot subscribe to petitioner’s claim that there was no misdeclaration on the subject vehicles as the chassis number, brand and color in the IEIRDs are the same as those in the commercial invoices because the records disclose otherwise.

The Court notes the discrepancies in the subject vehicles’ descriptions both in the IEIRDs and the result of the spot check or 100% physical examination (conducted on 05 August 2015) as detailed in the “Spotcheck Reports”<sup>131</sup> prepared by the assigned Officers-on-Case, De Castro and Ugay. Their findings<sup>132</sup> are summarized below:

122       Supra at note 15.  
123       Supra at note 17.  
124       Supra at note 23.  
125       Supra at note 13.  
126       Supra at note 11.  
127       Supra at note 19.  
128       Supra at note 27.  
129       Supra at note 25.  
130       Supra at note 21.  
131       Exhibit “R-20”, Division Docket, Volume III, pp. 1104-1107.  
132       Emphasis supplied on the difference.

| Alert Order       | IEIRD No. | As Declared (Description)<br>Per IEIRDs                | As Found (Description)<br>Per "Spotcheck Reports" of<br>assigned Officers-on-Case<br>Ugay and De Castro |
|-------------------|-----------|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| A/EG/20150724-101 | C-6372    | Ferrari California Coupe<br>Brand New 2015             | Brand New Ferrari 458<br>Speciale 2015                                                                  |
| A/EG/20150724-102 | C-6373    | 2015 Brand New Mercedes<br>Benz GLK350, SUV            | 2015 Mercedes Benz G63 AMG                                                                              |
| A/EG/20150724-104 | C-6374    | 2015 Brand New Mercedes<br>Benz C200, Sedan            | 2015 Mercedes Benz C63 AMG                                                                              |
| A/EG/20150724-108 | C-6375    | Land Rover Defender 90 SUV<br>Brand New 2015           | Land Rover Defender 90 SUV<br>Brand New 2015                                                            |
| A/EG/20150724-107 | C-6380    | Land Rover LR2 SUV Brand<br>New 2015                   | Brand New Land Rover Range<br>Rover 2015                                                                |
| A/EG/20150724-106 | C-6381    | 2015 Brand New Mercedes<br>Benz C200, Sedan, Silver    | 2015 Mercedes Benz CLK<br>DTM AMG                                                                       |
| A/EG/20150724-109 | C-6395    | Toyota Land Cruiser GX SUV<br>Brand New 2015           | Brand New Toyota<br>Landcruiser GXR Bulletproof<br>2015                                                 |
| A/EG/20150724-103 | C-6398    | 2015 Brand New Toyota Prado<br>SUV, Silver, gas, 6 cyl | 2015 Brand New Toyota Prado<br>SUV, Silver, gas, 6 cyl                                                  |
| A/EG/20150724-110 | C-6403    | Mclaren 540C Brand New 2015                            | Brand New Mclaren MP4-12C<br>OR 650S                                                                    |

Clearly from the foregoing, petitioner misdeclared the importation of subject vehicles as there are discrepancies in seven (7) IEIRDs, specifically C-6372, C-6373, C-6374, C-6380, C-6381, C-6395 and C-6403; particularly, as regards the vehicles' model and/or series.

Notwithstanding the glaring discrepancies in the model and/or series, petitioner did not provide any reasons therefor. It simply argued that the Vehicle Identification Number (VIN) or the chassis number of the subject vehicles as declared in the IEIRDs were the same when the vehicles were physically inspected by the customs examiners; thus, insisting that there were no misdeclarations. It must be noted, however, the VIN or chassis number must be supplied only to determine the country of origin of the imported vehicle, as provided under Part IV(2.2) of the DOF Joint Order No. 1-2010<sup>133</sup>, which states:

...

## IV. ADMINISTRATIVE PROVISIONS:

...

2. For purposes of arriving at the total landed value, the following procedures shall be adopted:

...

**2.2 In the determination of the country of origin, the first (1<sup>st</sup>) digit of the vehicle's identification number or VIN or chassis number, shall be used as the basis thereof, i.e.[:]**

US Manufacture Motor Vehicles – 1, 2, etc.

European Manufactured – V, W

Japan manufactured – J<sup>134</sup>

...

Hence, even if respondent BOC found the same VINs or chassis numbers on the subject vehicles, still, the discrepancies remain as regards the models and/or series (of the said vehicles).

In an attempt to justify the said discrepancies, petitioner contended that the term “misdeclaration” has a specific technical description under CAO No. 006-93<sup>135</sup> and went on to claim that misdeclared articles are those that do not tally with the details as declared in the IEIRD, which details were used to identify the tariff classification. Petitioner thus maintained that the articles will be considered misdeclared only if they do not fall under the same tariff headings and subheadings as those of the articles declared in the IEIRD. Petitioner added that since the subject vehicles were properly classified under the ASEAN Harmonized Tariff Nomenclature (AHTN) tariff heading of 8703.23.24<sup>136</sup> (motor vehicles with cylinder exceeding 2500 cc) at 30% rate duty using the descriptions made in the IEIRDs, there was no misdeclaration from its end.

We disagree.

Petitioner failed to consider that CAO No. 006-93 was issued to clarify the word “misdeclared” and “undeclared” as used in Section 2503 of the TCCP, as amended by RA 7651.<sup>137</sup> The relevant parts thereof provide:

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<sup>134</sup> Emphasis supplied.

<sup>135</sup> Supra at note 60.

<sup>136</sup> ASEAN Harmonized Tariff Nomenclature (AHTN) 2017.

<sup>137</sup> AN ACT TO REVITALIZE AND STRENGTHEN THE BUREAU OF CUSTOMS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED.

...

- I. For Information, Section 2503 of the Tariff and Customs of the Philippines as amended by R.A. No. 7651 and which pertinent, reads as follows:

“Section 2503. ... Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of the Code.”

- II. Definition:

- a. The word misdeclared as used in the proviso of Sec. 2503 as amended by RA 7651 shall mean that the article(s) as found upon examination does not tally with the details of the article(s) as declared in the entry, which details identify the declared articles in the entry both for tariff classification and statistical purposes and if the misdeclared article(s) found upon examination can be specifically classified in the Tariff and Customs Code, such misdeclared article(s) does not fall under the same tariff description in the terms of the headings and subheadings in the Code as those of the articles declared in the entry.
- b. The word undeclared as used in the proviso of Sec. 2503, as amended by RA 7651, shall refer to articles not specified in the entry or invoice.

...

From the foregoing, it is clear that the word “misdeclared” pertains to articles that when found will certainly not fall under the same tariff heading as those declared in the import entry; thus, can be *ipso facto* forfeited in favor of the government. Such definition does not limit the meaning of misdeclaration, as used in Section 2503 of the TCCP, as amended, to inaccurate declarations in the entry that will yield an incorrect tariff classification. In fact, the term “misdeclaration” was subsequently defined under Section 1400 of the CMTA which provides in part:

...

**SEC. 1400.** *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.* — **Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or**

misclassification through insufficient or wrong description of the goods or use of wrong tariff heading **resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared**, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due.<sup>138</sup>

...

Misdeclaration was also given a much clearer definition under Section 3.6 of CAO No. 01-2019<sup>139</sup>, which provides:

...

3.9. **Misdeclaration** - shall refer to a false, untruthful, erroneous or inaccurate declaration as to quantity, quality, description, weight or measurement of the goods resulting in deficiency between the duty and the tax that should have been paid and the duty and tax actually paid and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory.<sup>140</sup>

...

Applying the foregoing, “misdeclaration” connotes a false, untruthful, erroneous or inaccurate declaration in quantity, quality, description, weight, or measurement of goods. It is not restricted to discrepancies that will result in an incorrect tariff classification of the imported articles.

With the above disquisition, the Court could only deem that there had been misdeclarations of the subject vehicles covered by IEIRD Nos. C-6372, C-6373, C-6374, C-6380, C-6381, C-6395 and C-6403.

B. THE SUBJECT VEHICLES WERE  
UNDERVALUED.

Apart from the finding of misdeclaration, BOC officials also discovered that the subject vehicles were undervalued as the models

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<sup>138</sup> Emphasis supplied.

<sup>139</sup> POST CLEARANCE AUDIT AND PRIOR DISCLOSURE PROGRAM.

<sup>140</sup> Emphasis supplied.

and/or series thereof, as found, were higher and considerably more valuable compared to what was declared in the IEIRDs. Pending the determination of the IAS Values, respondent BOC's EG used reference values as preliminary basis for value verification.<sup>141</sup>

The table below summarizes the declared amounts in the IEIRDs *vis-à-vis* the EG reference values as used in the Memorandum submitted by the assigned Officers-on-Case, Ugay and De Castro:

| IEIRD No. | As declared<br>(Value in USD<br>Per IEIRD <sup>142</sup> )                             | As found<br>(Value in USD<br>Per EG Memorandum <sup>143</sup> )               | Discrepancy |
|-----------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------|
| C-6372    | Ferrari California Coupe Brand New 2015<br><br>122,152.00 (1 unit)                     | Brand New Ferrari 458 Speciale 2015<br><br>298,000.00 (1 unit)                | 59%         |
| C-6373    | 2015 Brand New Mercedes Benz GLK350, SUV<br><br>53,970.00 (2 units)                    | 2015 Brand New Mercedes Benz G63 AMG<br><br>160,126.26 (2 units)              | 66%         |
| C-6374    | 2015 Brand New Mercedes Benz C200, Sedan, Gas, 4 cyl, White<br><br>26,985.60 (1 unit)  | 2015 Brand New Mercedes Benz C63 AMG<br><br>80,063.13 (1 unit)                | 66%         |
| C-6375    | Land Rover Defender 90 SUV Brand New 2015<br><br>43,368.00 (2 units)                   | Land Rover Defender 90 SUV Brand New 2015<br><br>70,668.12 (2 units)          | 38%         |
| C-6380    | Brand New Land Rover LR2 SUV 2015<br><br>29,780.00 (1 unit)                            | Brand New Land Rover Range Rover 2015<br><br>83,900.00 (1 unit)               | 64%         |
| C-6381    | 2015 Brand New Mercedes Benz C200, Sedan, Silver, 4 cyl, Gas<br><br>29,512.00 (1 unit) | 2015 Mercedes Benz CLK DTM AMG<br><br>106,279.60 (1 unit)                     | 72%         |
| C-6395    | Toyota Land Cruiser GX SUV Brand New 2015<br><br>74,000.00 (2 units)                   | Brand New Toyota Landcruiser GXR Bulletproof 2015<br><br>207,753.00 (2 units) | 64%         |
| C-6398    | 2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl<br><br>30,000.00 (1 unit)          | 2015 Brand New Toyota Prado SUV, Silver, gas, 6 cyl<br><br>45,000.00 (1 unit) | 33%         |
| C-6403    | Mclaren 540C Brand New 2015                                                            | Brand New McLaren MP4-12C OR 650S 2015                                        | 73%         |

<sup>141</sup> Par. 4.1 of Customs Memorandum Order (CMO) No. 16-2010.

<sup>142</sup> Supra at notes 11, 13, 15, 17, 19, 21, 23, 25 and 27.

<sup>143</sup> Supra at note 37, pp. 1113-1114.

| IEIRD No. | As declared<br>(Value in USD<br>Per IEIRD <sup>142</sup> ) | As found<br>(Value in USD<br>Per EG Memorandum <sup>143</sup> ) | Discrepancy |
|-----------|------------------------------------------------------------|-----------------------------------------------------------------|-------------|
|           | 60,000.00 (1 unit)                                         | 228,080.00 (1 unit)                                             |             |

Section 2503 of the TCCP, as amended, provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute *prima facie* evidence of fraud penalized under Section 2530 of the TCCP, as amended.<sup>144</sup>

From the table above, there was an initial determination of *prima facie* evidence of fraud on the subject vehicles because they were misdeclared and, consequently, undervalued, with differences ranging from 33% to as high as 73% (see last column of the table above). Further, the findings of undervaluation were later confirmed when the IAS Values were issued.

As provided in Section 2535<sup>145</sup> of the TCCP, as amended, once probable cause is established, the burden of proof is shifted to the claimant<sup>146</sup> who, in this case, is petitioner (the importer of the subject vehicles). However, petitioner failed to adduce evidence to overthrow the *prima facie* evidence of fraud in the importation of the subject vehicles.

In disputing the seizure and/or forfeiture of the subject vehicles, petitioner maintained that respondent BOC's EG improperly used reference values for customs valuation.

Again, We disagree.

Under Item 4.1 of CMO No. 16-2010<sup>147</sup>, where the Collector of Customs has reasons to doubt the truth and accuracy of the declared

<sup>144</sup> *People of the Philippines v. King, et al.*, CTA Crim. Case No. O-133 (I.S. No. 2006-705), 20 September 2017.  
<sup>145</sup> *Supra* at p. 19.  
<sup>146</sup> *Clemente v. Republic of the Philippines*, CTA Case No. 9545, 15 January 2020.  
<sup>147</sup> Rules and Regulations to Implement Customs Administrative Order (CAO) No. 4-2004, more particularly on Dutiable Value.

values, he or she can use published or established dutiable value as a risk management tool to alert customs or do a value verification check. The pertinent portion thereof provides:

...

4.0 CASES WHERE THE COLLECTOR OF CUSTOMS HAS REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

- 4.1 Published or established dutiable value, or any other value reference from whatever source, cannot be used as substitute value for customs valuation. **However, such value information may be used as a risk management tool to establish doubt or to alert customs to do a value verification check either upfront thru a system created for the purpose or on a post-entry basis through the Post Entry Audit infrastructure.**<sup>148</sup>

...

Here, given the circumstances of the importation, where there was apparent misdeclaration, respondent BOC's EG could not be faulted for using reference values during its initial value verification. Such use of reference values was clearly done as a risk management tool to confirm any doubt on the truth or accuracy of the declared values (brought about by the finding of misdeclaration) and to prompt customs officers to do a value verification.

Petitioner likewise averred that the dutiable values of the subject vehicles were based on the declared transaction values reflected in the commercial invoices. It repeatedly cited Section 201 of the TCCP, as amended, which mandates the use of *Method One* or the *Transaction Value* in assessing the dutiable value of an imported good. The relevant provision states:

...

SEC. 201. *Basis of Dutiable Value.* —

(A) **Method One. — Transaction Value. — The dutiable value of an imported article subject to an *ad valorem* rate of duty shall**

**be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:**

- (1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
  - (a) Commissions and brokerage fees (except buying commissions);
  - (b) Cost of containers;
  - (c) The cost of packing, whether for labour or materials;
  - (d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods;
  - (e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;
- (2) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;
- (4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and
- (5) The cost of insurance.

All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.



No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section. ...<sup>149</sup>

...

Also, petitioner cited Item 3.1 of CMO No. 16-2010<sup>150</sup> purportedly supporting the use *Method One* as the primary method in determining the dutiable value, viz:

...

### 3.1 GENERAL PROVISIONS

**The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value,** whenever the conditions prescribed for its use are fulfilled.<sup>151</sup>

...

Moreover, petitioner claimed that if the dutiable value cannot be determined under *Method One*, then the methods of valuation are sequentially applied as stated in Section 201 of the TCCP, as amended, viz:

...

(B) Method Two. — Transaction Value of Identical Goods. — **Where the dutiable value cannot be determined under method one, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued.** “Identical goods” shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(C) Method Three. — Transaction Value of Similar Goods. — **Where the dutiable value cannot be determined under the preceding method, the dutiable value shall be the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued.** “Similar goods” shall mean goods which, although not alike in all respects, have like characteristics and like component materials which enable

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<sup>149</sup> Emphasis supplied.

<sup>150</sup> Supra at note 147.

<sup>151</sup> Emphasis supplied.

them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar.

**If the dutiable value still cannot be determined through the successive application of the two immediately preceding methods, the dutiable value shall be determined under method four or, when the dutiable value still cannot be determined under that method, under method five, except that, at the request of the importer, the order of application of methods four and five shall be reversed: Provided, however, That if the Commissioner of Customs deems that he will experience real difficulties in determining the dutiable value using method five, the Commissioner of Customs may refuse such a request in which event the dutiable value shall be determined under method four, if it can be so determined.**

...

(F) Method Six. — Fallback Value. — **If the dutiable value cannot be determined under the preceding methods described above, it shall be determined by using other reasonable means and on the basis of data available in the Philippines.**<sup>152</sup>

...

Similarly, Items 2.6 and 2.7 in relation to 3.1 of CMO No. 16-2010<sup>153</sup> provide for the sequential application of the valuation methods, viz:

...

#### **Sequential Application of Valuation Methods**

- 2.6 The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is the Transaction Value and imported goods are to be valued in accordance with the provisions of this method whenever the conditions prescribed for its use are fulfilled.
- 2.7 Where the dutiable value cannot be determined under the Transaction Value method, it is to be determined by proceeding sequentially through the succeeding methods to the first such method under which the dutiable value can be determined. Except as provided under Section 3.1, paragraph 3

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<sup>152</sup> Emphasis supplied.

<sup>153</sup> Supra at note 147.

of this Order, it is only when the dutiable value cannot be determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.

...

3.1 GENERAL PROVISIONS

The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value, whenever the conditions prescribed for its use are fulfilled.

However, if the dutiable value cannot be determined with the use of Method One, the following valuation methods shall be applied in sequential order:

- |               |                                          |
|---------------|------------------------------------------|
| Method Two:   | The Transaction Value of Identical Goods |
| Method Three: | The Transaction Value of Similar Goods   |
| Method Four:  | Deductive Value                          |
| Method Five:  | Computed Value                           |
| Method Six:   | Fallback Value                           |

However, at the request of the importer, the order of application of Methods Four and Five may be reversed; provided, that the Commissioner of Customs agrees to such request taking into consideration that the reversal of the sequential order will not give rise to real difficulties for the BOC in determining the dutiable value under Method Five.

If the importer does not request that the order of Method Four and Method Five be reversed, the normal order of the sequence shall be followed. If the importer does so request but it then proves impossible to determine the dutiable value under the provisions of Method Five, the dutiable value shall be determined under the provisions of Method Four, if it can be so determined.

Where the dutiable value cannot be determined under the provisions of Methods One to Five, it shall be determined under the provisions of Method Six.<sup>154</sup>

...

<sup>154</sup> Emphasis in the original text and underscoring supplied.

Following the afore-quoted provisions, the dutiable value of imported articles shall be based on the valuation methods sanctioned by the TCCP, as amended, in successive order, with the *Transaction Value System* or *Method One* as the first among the six (6) and takes precedence over the other methods. Under the said method, the transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted in accordance with Section 201 of the TCCP, as amended.

Unfortunately, petitioner failed to appreciate that *Method One* may not be used if there is doubt in the truth and accuracy of the documents presented by the importer. Section 201 of the TCCP, as amended, states in part:

...

Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. **When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof.**

If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, be deemed that the customs value of the imported goods cannot be determined under **Method One**. ... When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.<sup>155</sup>

...

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<sup>155</sup>

Emphasis supplied.

Corollarily, Items 4.2 and 4.3 of CMO No. 16-2010<sup>156</sup> provide:

...

4.2 When an import declaration has been presented and where the Collector of Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Collector of Customs may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Section 3.2.8.

4.3 If, after receiving further information, or in the absence of a response from the importer, the Collector of Customs still has reasonable doubts about the truth or accuracy of the declared value, then it is deemed that the dutiable value of imported goods cannot be determined under Method One. The Collector of Customs shall then proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided by this Order.<sup>157</sup>

...

In the case at bar, respondent COC sought additional documents from petitioner to support the declared transaction values as he was not satisfied with the commercial invoices, packing lists and bills of lading. However, petitioner failed to comply. Petitioner's own witness, Customs Examiner Manguiat, confirmed such failure, viz:

...

State Sol. Dato:

Q: So if the IAS clearance shows a value that is higher or lower than the transaction value, will use the IAS value, is that correct?

Ms. Manguiat:

A. *Pag mayroon pong sinabmit na proof of payment ang importer, mas susundin po naming yung proof of payment dahil sa transaction value po iyong sinusunod po natin.*

State Sol. Dato:

Q: So in this case, did the importer submit a proof of payment other than the invoice?

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<sup>156</sup> Supra at note 147.

<sup>157</sup> Emphasis supplied.

Ms. Manguiat:

A. *Hindi pa po.*

State Sol. Dato:

Q: **None as of when? Until now?**

Ms. Manguiat:

A. **Now.**

State Sol. Dato:

Q: **The importer has not submitted?**

Ms. Manguiat:

A. **Yes po.**<sup>158</sup>

...

As stated earlier, given the circumstances under which the vehicles were imported, the Court finds that respondent BOC is justified in not using the *Transaction Value System or Method One* as basis for the customs value. In other words, it was not erroneous for respondent BOC to not have used the values appearing on the commercial invoices as competent or reliable basis for valuation.

Additionally, pursuant to Customs Memorandum Circular (CMC) No. 70-2014<sup>159</sup>, all vehicles under tariff headings 87.02<sup>160</sup> and 87.03<sup>161</sup> shall be referred to IAS for value recommendations.<sup>162</sup> In addition, no shipments of automobiles under these tariff headings should be released without prior clearance from respondent BOC's IAS.<sup>163</sup> These directives have been consolidated in respondent BOC's Memo dated 30 March 2015<sup>164</sup>, the pertinent portions thereof read:

<sup>158</sup> TSN dated 28 October 2020, pp. 19-20; Emphasis and italics supplied.

<sup>159</sup> VALUE VERIFICATION OF AUTOMOBILES.

<sup>160</sup> Tariff Heading No. 87.02 - Motor vehicles for the transport of ten or more persons, including the driver. See <<https://tariffcommission.gov.ph/tariff-book>> (Last accessed on 01 August 2022).

<sup>161</sup> Tariff Heading No. 87.03 - Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars. See <<https://tariffcommission.gov.ph/tariff-book>> (Last accessed on 01 August 2022).

<sup>162</sup> Per CMC No. 70-2014, "[e]ffective 16 June 2014, [All District and Subport Collectors, Chiefs and Personnel of the Formal Entry Division] are hereby directed to refer to the Imports & Assessment Service (IAS) all entries of shipments covering completely built automobiles with AHTN Headings 87.02 & 87.03 that are propelled by gasoline, diesel, electricity, or any other motive power with engine displacement of 2,000 cc and above."

<sup>163</sup> Per CMC No. 70-2014, "[n]o release of shipments of automobiles under these tariff headings should be made without prior clearance from IAS."

<sup>164</sup> Shipments subject to IAS review.

...

2. All import entries covering automobiles propelled by gasoline, diesel, electricity, or any other motive power with engine displacement of 2,000 cc and above, except for those listed below, must be referred to the Imports and Assessment Service (IAS) prior to the final assessment.

...

4. The Import & Assessment Service (IAS) will provide value recommendations to the Formal Entry Division (FED) or equivalent units.

...

As the records bear, the "Spotcheck Reports"<sup>165</sup> of petitioner's witnesses, Customs Examiners Asaria and Manguiat, state that the subject shipments were under tentative liquidation as approved, pending issuance of the IAS clearance. As earlier observed, the referral to the IAS appears to be a precautionary measure taken by the BOC to prevent the undervaluation of imported goods to evade payment of proper customs duties and taxes.

A perusal of the IAS Values would reveal that the subject vehicles were valued based on the model and/or series as found during the spot check or 100% physical examination. Below is a table comparison of the model and/or series of the subject vehicles (as found) *per* "Spotcheck Reports" of the assigned Officers-on-Case, Ugay and De Castro, and *per* IAS Values.

| IEIRD No. | As Found (Description)<br><i>Per "Spotcheck Reports" of<br/>assigned Officers-on-Case Ugay<br/>and De Castro</i> <sup>166</sup> | As Found (Description)<br><i>Per IAS Values</i> <sup>167</sup> |
|-----------|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| C-6372    | Brand New Ferrari 458 Speciale<br>2015                                                                                          | Brand New Ferrari 458 Speciale                                 |
| C-6373    | 2015 Mercedes Benz G63 AMG                                                                                                      | 2015 Brand New Mercedes Benz<br>G63 AMG                        |
| C-6374    | 2015 Mercedes Benz C63 AMG                                                                                                      | 2015 Brand New Mercedes Benz<br>C63 AMG                        |
| C-6375    | Land Rover Defender 90 SUV<br>Brand New 2015                                                                                    | Brand New Landrover Defender 90                                |

<sup>165</sup> Exhibit "P-102", Division Docket, Volume II, p. 745; and Exhibit "P-103", Division Docket, Volume II, p. 778.

<sup>166</sup> Supra at note 131.

<sup>167</sup> Exhibit "R-22", supra at note 41.

| IEIRD No. | As Found (Description)<br>Per “Spotcheck Reports” of<br>assigned Officers-on-Case Ugay<br>and De Castro <sup>166</sup> | As Found (Description)<br>Per IAS Values <sup>167</sup> |
|-----------|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| C-6380    | Brand New Land Rover Range<br>Rover 2015                                                                               | Brand New Land Rover Range<br>Rover                     |
| C-6381    | 2015 Mercedes Benz CLK DTM<br>AMG                                                                                      | 2015 Brand New Mercedes Benz<br>CLK DTM AMG             |
| C-6395    | Brand New Toyota Landcruiser<br>GXR Bulletproof 2015                                                                   | Brand New Toyota Landcruiser<br>GXR Bulletproof         |
| C-6398    | 2015 Brand New Toyota Prado SUV,<br>Silver, gas, 6 CYL                                                                 | 2015 Brand New Toyota Prado                             |
| C-6403    | Brand New McLaren MP4-12C OR<br>650S                                                                                   | Brand New McLaren MP4-12C or<br>650S                    |

Section 201 of the TCCP, as amended, defined “identical goods” as goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical. On that note, the summary above shows that the IAS Values were derived from identical goods of the subject vehicles (because the values were determined in reference to the model and/or series of the said vehicles as they were found). Thus, there is reasonable basis for the Court to conclude that the amounts *per* IAS Values were arrived at using the next sanctioned valuation method, *i.e.*, the *Transaction Value of Identical Goods or Method Two* for purposes of determining the dutiable value of the subject vehicles.

The table below summarizes the declared amounts in the IEIRDs *vis-à-vis* the IAS Values and the percentages (%) of discrepancy confirm that petitioner indeed undervalued the subject vehicles.

| IEIRD No. | Description and Values<br>As Declared Per IEIRDs                              | Description and Values<br>As Found Per IAS Values                    | Discrepancy <sup>168</sup> |
|-----------|-------------------------------------------------------------------------------|----------------------------------------------------------------------|----------------------------|
| C-6372    | 2015 Brand New Ferrari<br>California Coupe<br><br>\$122,153.00 <sup>169</sup> | Brand New Ferrari 458<br>Speciale<br><br>\$238,400.00 <sup>170</sup> | 48.76%                     |
| C-6373    | Two (2) Units of 2015 Brand<br>New Mercedes Benz GLK                          | 2015 Brand New Mercedes<br>Benz G63 AMG                              | 75.40%                     |

<sup>168</sup> Formula: (Value as found less Declared value)/Value as found.  
<sup>169</sup> Supra at note 15.  
<sup>170</sup> Exhibit “R-22”, supra at note 41.

| IEIRD No. | Description and Values As Declared Per IEIRDs                                                                                     | Description and Values As Found Per IAS Values                                                                       | Discrepancy <sup>168</sup> |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------|
|           | 350 SUV, White, Gasoline, 6cyl<br><br>\$26,985.60 (1 unit) or<br>\$53,971.20 <sup>171</sup> (2 units)                             | <br><br>\$109,720.00 <sup>172</sup> (1 unit) or<br>\$219,440 (2 units)                                               |                            |
| C-6374    | 2015 Brand New Mercedes Benz C200<br><br>\$29,512.00 <sup>173</sup>                                                               | 2015 Brand New Mercedes Benz C63 AMG<br><br>\$50,200.00 <sup>174</sup>                                               | 41.21%                     |
| C-6375    | Two (2) Units of 2015 Brand New Land Rover Defender 90 SUV<br><br>\$21,684.00 (1 unit) or<br>\$43,368.00 <sup>175</sup> (2 units) | Brand New Land Rover Defender 90<br><br>\$31,054.92 <sup>176</sup> (1 unit) or<br>\$62,109.84 (2 units)              | 30.18%                     |
| C-6380    | 2015 Brand New Land Rover LR2<br><br>\$29,280.00 <sup>177</sup>                                                                   | Brand New Land Rover Range Rover<br><br>\$149,196.00 <sup>178</sup>                                                  | 80.37%                     |
| C-6381    | 2015 Brand New Mercedes Benz C200 Sedan, Silver, 4cyl, Gas<br><br>\$29,512.00 <sup>179</sup>                                      | 2015 Brand New Mercedes Benz CLK DTM AMG<br><br>\$160,317.60 <sup>180</sup>                                          | 81.59%                     |
| C-6395    | Two (2) Units of 2015 Brand New Toyota Land Cruiser GX SUV<br><br>\$37,000 (1 unit) or<br>\$74,000 <sup>181</sup> (2 units)       | Brand New Toyota Landcruiser GXR Bulletproof<br><br>\$85,522.84 <sup>182</sup> (1 unit) or<br>\$171,045.68 (2 units) | 56.73%                     |
| C-6398    | 2015 Brand New Toyota Prado, SUV, Silver, Gas, 6cyl<br><br>\$30,000.00 <sup>183</sup>                                             | 2015 Brand New Toyota Prado<br><br>\$45,000.00 <sup>184</sup>                                                        | 33.33%                     |
| C-6403    | 2015 Brand New McLaren 540C                                                                                                       | Brand New McLaren MP4-12C OR 650S                                                                                    | 71.75%                     |

<sup>171</sup> Supra at note 17.  
<sup>172</sup> Exhibit "R-22", supra at note 41.  
<sup>173</sup> Supra at note 23.  
<sup>174</sup> Exhibit "R-22", supra at note 41.  
<sup>175</sup> Supra at note 13.  
<sup>176</sup> Exhibit "R-22", supra at note 41.  
<sup>177</sup> Supra at note 11.  
<sup>178</sup> Exhibit "R-22", supra at note 41.  
<sup>179</sup> Supra at note 19.  
<sup>180</sup> Exhibit "R-22", supra at note 41.  
<sup>181</sup> Supra at note 27.  
<sup>182</sup> Exhibit "R-22", supra at note 41.  
<sup>183</sup> Supra at note 25.  
<sup>184</sup> Exhibit "R-22", supra at note 41.

| IEIRD No. | Description and Values As Declared Per IEIRDs | Description and Values As Found Per IAS Values | Discrepancy <sup>168</sup> |
|-----------|-----------------------------------------------|------------------------------------------------|----------------------------|
|           | \$60,000.00 <sup>185</sup>                    | \$212,400 <sup>186</sup>                       |                            |

Evidently, petitioner’s declared values for the subject vehicles are significantly lower than the IAS Values (determined using the *Transaction Value of Identical Goods or Method Two*) **by more than 30%**. This goes to show that petitioner’s declared values failed to disclose the actual value of the subject vehicles and this qualifies as “undervaluation”, as defined in Section 2503 of the TCCP, as amended, and, given the discrepancy of more than 30%, such undervaluation unmistakably constitutes *prima facie* evidence of fraud.

Taking everything into consideration, this Court is constrained to affirm respondent COC’s finding that there exists probable cause for seizure and/or forfeiture of the subject vehicles for misdeclaration and undervaluation under Section 2503, in relation to Section 2530, of the TCCP, as amended.

II. THE SEIZURE AND/OR FORFEITURE OF THE SUBJECT VEHICLES IS PROPER.

Section 2530(1)(3)(4)(5) of the TCCP, as amended, governs the forfeiture of vehicles which were imported by fraudulent means. The relevant provision reads:

...  
SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* — **Any vehicle**, vessel or aircraft, cargo, article and other objects **shall, under the following conditions be subjected to forfeiture:**

...

1. **Any article sought to be imported or exported**

...

<sup>185</sup> Supra at note 21.  
<sup>186</sup> Exhibit “R-22”, supra at note 41.

(3) **On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;**

(4) **On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and**

(5) Through any **other practice or device contrary to law** by means of which such articles was entered through a customhouse to the **prejudice of the government.**<sup>187</sup>

...

Based on the foregoing provision, the subject vehicles must be forfeited in favor of the government for the following reasons: (1) they were imported in the Philippine territory through false declarations in the IEIRDs (*i.e.*, misdeclaration as to their model and/or series); and, (2) they were undervalued *per* IEIRDs by **more than 30%** of the actual value as found during the physical inspection (*i.e.*, *prima facie* presumption of fraud).

III. SECTION 1117 OF THE CUSTOMS MODERNIZATION AND TARIFF ACT (CMTA) FOR THE ISSUANCE OF AN ORDER OF RELEASE IS NOT APPLICABLE TO THE INSTANT CASE.

Lastly, petitioner insisted that the subject vehicles should be “deemed released” pursuant to Section 1117 of the CMTA if the COC fails to decide on appeal from the decision of the District Collector within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. Here, since respondent COC’s assailed Decision, reversing POB OIC-District Collector Galeno’s Consolidated Decision, was only rendered on 04 October 2017, or more than 48 hours from POB OIC-District Collector Galeno’s Consolidated Decision, the subject vehicles should have been released as a matter of course. 

We are unconvinced.

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<sup>187</sup>

Emphasis supplied.

Section 1117 of the CMTA provides:

...

**SEC. 1117. Warrant of Seizure or Order of Release.** — The District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release. **In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.**<sup>188</sup>

...

From the foregoing, it is clear that the second sentence of Section 1117 of the CMTA is applicable only when the District Collector determines that there is no probable cause for the issuance of a warrant of seizure; hence, the issuance of an **order of release** of the imported goods. When the District Collector issues an order of release, the COC has a limited period to review the said order (*i.e.*, 48 hours or 24 hours in case of perishable goods); otherwise, the imported goods shall be deemed released. A perusal of POB OIC-District Collector Galeno's Consolidated Decision reveals that he ordered the quashal of the WSDs, and the payment of additional duties, taxes and surcharges for the subject vehicles. It is not an order of release.

Moreover, the main issue in the instant petition is the validity of the seizure and/or the forfeiture of the subject vehicles, and not the release thereof. Thus, Section 1117 of the CMTA is not applicable to this case.

Furthermore, the governing provisions for appeal in protest in forfeiture cases are found under Sections 1126 and 1127 of Chapter 5 of the CMTA, which read:

...

## CHAPTER 5

## APPEAL IN PROTEST AND FORFEITURE CASES

**SEC. 1126. *Appeal to the Commissioner.*** — **In forfeiture cases**, the person aggrieved by the decision of a District Collector may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision, file a written notice of appeal, together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records, or fifteen (15) days in the case of perishable goods: *Provided*, That if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed. An appeal filed beyond the period herein prescribed shall be dismissed.

Appeals to protest cases shall be governed by Section 114 of this Act.

The decision of the Commissioner may be served through the recognized modes of service under existing law.

**SEC. 1127. *Automatic Review in Forfeiture Cases.*** — *The Commissioner shall automatically review any decision by the District Collector adverse to the government.* The entire records of the case shall be elevated within five (5) days from the promulgation of the decision. The Commissioner shall decide on the automatic review within thirty (30) days, or within ten (10) days in the case of perishable goods, from receipt of the records. **When no decision is rendered within the prescribed period or when a decision adverse to the government is rendered by the Commissioner involving goods with FOB or FCA value of ten million pesos (P10,000,000.00) or more, the records of the decision of the Commissioner, or of the District Collector under review, as the case may be, shall be automatically elevated within five (5) days for review by the Secretary of Finance. The decision issued by the Secretary of Finance, whether or not a decision was rendered by the Commissioner within thirty (30) days, or within ten (10) days in the case of perishable goods, from receipt of the records, shall be final upon the Bureau.**<sup>189</sup>

...



In the case at bar, POB OIC-District Collector Galeno rendered the Consolidated Decision on 03 March 2017, ordering for the quashal of the WSDs; thus, adverse to the government. Pursuant to Section 1127 of the CMTA, the case was forwarded to respondent COC on 07 March 2017 for his automatic review.<sup>190</sup> Respondent COC had 30 days to decide the case, or until 06 April 2017. The said 30-day period lapsed on 06 April 2017, without any decision from respondent and thus, the said Consolidated Decision was deemed affirmed. However, respondent COC subsequently reversed the said Consolidated Decision through the issuance of the assailed Decision on 04 October 2017.

It is worth noting that, although the District Collector's decision will only be deemed affirmed if the respondent COC does not render a decision within the prescribed period to decide, it is not deemed final and executory. Only the Secretary of Finance's (SOF's) decisions shall be final upon the BOC.

Here, on 06 April 2017, the case should have been elevated to the SOF for an automatic review. However, the records of the case are bereft of any proof that the same was elevated to the SOF. Thus, it is respondent COC's assailed Decision dated 04 October 2017, which was subsequently affirmed through his own assailed Order dated 19 April 2018, that is appealable to the CTA, as provided under Section 1136 of the CMTA, viz:

...

**SEC. 1136. Review by the CTA.** — Unless otherwise provided in this Act or by any other law, the **party aggrieved by the ruling or decisions of the Commissioner may appeal to the CTA**, in the manner and within the period prescribed by law and regulations. Decisions of the Secretary of Finance when required by this Act, may likewise be appealed to the CTA.

**Unless an appeal is made to the CTA in the manner and within the period prescribed by law and regulations, the ruling or decision of the Commissioner or the Secretary of Finance shall be final and executory.**<sup>191</sup>

...

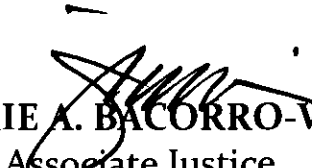
<sup>190</sup> See Annex "C" to the Petition for Review, Division Docket, Volume I, p. 88.

<sup>191</sup> Emphasis supplied.

Accordingly, We find that there is no procedural lapse on the part of respondent COC when he issued the assailed Decision and Order.

**WHEREFORE**, the foregoing considered, petitioner Monacat Trading’s Petition for Review filed on 04 June 2018 is hereby **DISMISSED** for lack of jurisdiction. Assuming the Court has been solidly vested with jurisdiction, the petition will still fail for utter lack of merit.

**SO ORDERED.**

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

**I CONCUR:**

  
**LANEE S. CUI-DAVID**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice  
2<sup>nd</sup> Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson’s Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.

  
ERLINDA P. UY  
Acting Presiding Justice